



POLICE DEPARTMENT

June 8, 2018

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In the Matter of Charges and Specifications : Case Nos.  
- against - : 2017-17081 & 2017-17270  
Police Officer Shana McLean :  
Tax Registry No. 950869 :  
6<sup>th</sup> Precinct :

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At: Police Headquarters  
One Police Plaza  
New York, New York 10038

Before: Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Michael Martinez, Esq.  
Worth, Longworth & London, LLP  
111 John Street, Suite 640  
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

## CHARGES AND SPECIFICATIONS

### Disciplinary Case No. 2017-17081

1. Said Police Officer Shana McLean, while assigned to the 6<sup>th</sup> Precinct, on or about December 7, 2016 through January 31, 2017, in [REDACTED] did knowingly associate with a person or organization reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities.

P.G. 203-10 Page 1 Paragraph 2(C) PUBLIC CONTACT-PROHIBITED CONDUCT

2. Said Police Officer Shana McLean, while assigned to the 6<sup>th</sup> Precinct, on or about December 7, 2016, in [REDACTED], engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Police Officer McLean failed to safeguard three (3) boxes of Department issued 9 mm hollow point bullets and a NYPD rain jacket.

P.G. 203-10 Page 1 Paragraph 5 PUBLIC CONTACT-PROHIBITED CONDUCT

### Disciplinary Case No. 2017-17270

1. Said Police Officer Shana McLean, while assigned to 6<sup>th</sup> Precinct, in New York County, on or about January 31, 2017 through February 10, 2017, after having been directed by New York City Police Lieutenant Alexander Adeschhenko to stop associating with Person A, did fail and neglect to comply with said order.

P.G. 203-03 Page 1 Paragraph 2 COMPLIANCE WITH ORDERS

## REPORT AND RECOMMENDATION

The above-named member of the department appeared before me on May 11, 2018.

Respondent, through her counsel, entered pleas of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

Respondent, having pleaded Guilty, is found Guilty of all Specifications.

## SUMMARY OF EVIDENCE IN MITIGATION

By way of background, it came to IAB's attention on December 8, 2016, that on December 7, 2016, the [REDACTED] Police Department had arrested Person A, of [REDACTED], for various fraudulent credit card transactions, possession of stolen property and possession of hollow point bullets. Person A had been observed driving a vehicle registered to Respondent [REDACTED] and was arrested in a second vehicle, a 2016 Audi registered to Respondent, which contained NYPD property of a Department rain jacket and 9mm hollow point bullets. Person A said the NYPD property belonged to [REDACTED] Respondent.

Respondent was officially interviewed by the Department on January 31, 2017. She stated that she knew of the December 7, 2016, arrest of Person A and admitted she resided with him. During the interview, she was instructed that she can no longer associate with Person A. Respondent continued to live with Person A and married him on February 10, 2017.

Respondent was charged in three specifications with 1) knowingly associating with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activities from December 7, 2016 through January 31, 2017; 2) failing to safeguard her NYPD rain jacket and three boxes of Department issued 9 mm hollow point bullets; and 3) from January 31, 2017, through February 10, 2017, failing to comply with an order from a Lieutenant to stop associating with Person A.

Respondent plead Guilty to all three specifications and in her testimony at trial admitted to the misconduct as charged. She also testified about her relationship to Person A and requested that the penalty be mitigated.

Respondent testified that she has known Person A for approximately 25 years since they went to pre K together. They lost touch for a while, but about four years ago they started seeing each other and in 2016 they moved in together. Respondent's [REDACTED] was living with her and Person A. Respondent testified that [REDACTED] has never been there for [REDACTED] either financially or physically, and although he pays some child support, he hasn't seen [REDACTED] in about a year. Respondent described Person A as acting as her [REDACTED] and further testified that he actually does more for [REDACTED] than a father would. (Tr. 11-13)

Respondent testified that when Person A first moved in with Respondent, he was looking for a full time job and although their intention was to get married, they had not set a date yet. (Tr. 14) After Respondent learned of his arrest for a felony on December 7, 2016, she continued to live with him after he was bailed out the next day, because he was her "support system." She testified that if she didn't have him around, she "wouldn't have been able to function," [REDACTED] She was upset by his arrest but didn't want to leave him because she thought he was a "good person," to her and to [REDACTED] (Tr. 17-18)

Respondent testified that during her GO 15, she was informed that she was not allowed to see Person A anymore because he was neither [REDACTED] nor her husband. She said she was informed that if she was married to him, the Department wouldn't be able to tell her not to see him, so ten days later she did marry Person A. (Tr. 18)

With regard to Person A's felony arrest, Respondent testified that he plead guilty to the case and one of the charges was dropped down to a misdemeanor. He did not do any jail time and is now fully employed as a union worker with Con Edison. She further testified that he is still a [REDACTED] (Tr. 19)

With regard to the charge concerning her failure to safeguard her rain jacket and the bullets, Respondent said the ammunition boxes weren't full and there were only about three bullets in each box. The ammunition was left over from her trip to the range and she had not had a chance to put it in her locker, as she usually does since she never takes any ammunition or her firearm home. She sometimes brings her rain coat to details, so it was convenient to keep it in her car. She now understands that the items should have been safeguarded in her locker. (Tr. 16-17)

Respondent's counsel has recommended that the penalty imposed in this case be the loss of twenty vacation days instead of the loss of thirty vacation days and the one year probation that the Department has requested. (Tr. 31) He argued that the trend in society is towards redemption and the criminal association prohibition shouldn't be enforced in a manner inconsistent with that trend. (Tr. 24-25) In this case, while Respondent wasn't married to Person A at the time, she was in a serious relationship with him and they intended to get married. It was not realistic to expect her to cut off all contact with him upon his arrest since they were in essence a family unit. He further argued that since the Department did not charge Respondent with any misconduct after the date of her marriage to Person A, there would have been no charge of failure to comply with an order if Respondent had simply married Person A ten days earlier. (Tr. 25-27) With regard to the one year probation, counsel argued that it is a moot point because Respondent can now freely associate with Person A and the Department should not be monitoring her for a year.

The Department argued that from the time Respondent first learned of the arrest until she married Person A, her relationship with him needed to cease. Counsel for the Department argued that Respondent received a lawful order and she disobeyed it for ten days. The

Department's position is that this is something that can't be tolerated in a paramilitary organization. (Tr. 34-37)

In reviewing prior disciplinary cases, two mitigation cases somewhat similar to this case resulted in penalties of the loss of thirty vacation days and the imposition of one year of dismissal probation. In *Disciplinary Case No.* [REDACTED] a ten-year police officer with no prior formal disciplinary record pleaded guilty to associating with a known criminal arrested for possessing firearms. The person was described as being like a cousin to Respondent. Despite being instructed by an IAB lieutenant not to associate with this person, the Respondent continued to do so. In *Disciplinary Case No.* [REDACTED]

[REDACTED] a nineteen-year police officer with no prior formal disciplinary record pleaded guilty to associating with a known felon (her boyfriend) and for failing to subsequently follow an order from an IAB sergeant to cease all communications with her felon boyfriend. Despite the order to cease all communications, Respondent and her boyfriend continued to travel and spend time together. In that case, the Trial Commissioner held that where a member has failed to comply with a direct order by continuing to associate with a person who has engaged in criminal activity after being ordered to cease communications with that person, the penalty imposed has consistently included the one-year dismissal probation.

In Respondent's case, while she had a close relationship with Person A, it cannot be overlooked that she did in fact violate a direct order from a Lieutenant. This is a serious violation in a paramilitary organization as pointed out by counsel for the Department. As such, the court concurs with the Department that the loss of thirty vacation days is appropriate. With regard to the Department's recommendation of the imposition of one year dismissal probation, the court also concurs with this recommendation. While the court acknowledges Defense Counsel's

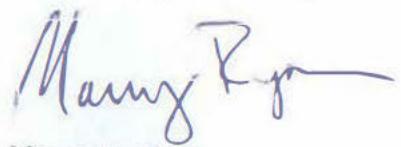
argument that since Respondent is now married to Person A, it is no longer considered misconduct by the Department to associate with him, the Court has noted that this Respondent does have a prior disciplinary history for associating with a person, other than Person A, who was deemed to reasonably be engaged in, likely to engage in or to have engaged in criminal activities. In *Disciplinary Case No.* [REDACTED] Respondent forfeited ten vacation days for being in a romantic relationship with someone she knew had an arrest history. This person was shot in her presence by a friend of [REDACTED]. In light of the fact that Respondent has previously, and relatively recently, been disciplined for the same misconduct at issue in this case, it is reasonable, and is recommended by the court, that a one year period of dismissal probation be imposed along with the loss of the thirty vacation days.

### PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 6, 2011. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Accordingly, I recommend that Respondent forfeit thirty (30) vacation days. I further recommend that Respondent be DISMISSED from the New York City Police Department, but that her dismissal be held in abeyance for a period of one year, pursuant to Section 14-115(d) of the Administrative Code, during which time she remains on the force at the Police Commissioner's discretion and may be terminated at any time without further hearings.

Respectfully submitted,



Nancy R. Ryan  
Assistant Deputy Commissioner Trials

## APPROVED

AUG 30 2018  
  
JAMES F. O'NEILL  
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER SHANA MCLEAN  
TAX REGISTRY NO. 950869  
DISCIPLINARY CASE NOS. 2017-17081 & 2017-17270

Respondent was appointed to the Department on July 6, 2011. On her last three annual performance evaluations, Respondent received three overall ratings of 3.5 "Highly Competent/Competent" in 2016, 2015, and 2014.

[REDACTED]

[REDACTED]

In 2014, Respondent forfeited 10 vacation days for making an inquiry in Department computers that was unrelated to Department business, and for associating with an individual who was known to engage in criminal activities.

On June 30, 2017, Respondent was placed on Level 2 Disciplinary Monitoring in connection with the filing of charges and specifications in this case; that monitoring remains ongoing.

For your consideration.

Nancy R. Ryan  
Assistant Deputy Commissioner Trials